

September 25, 2002

BRUNSWICK & TOPSHAM WATER DISTRICT
Appeal of Consumer Assistance Division
Decision

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we uphold the finding of the Director of the Consumer Assistance Division (CAD) that the Brunswick and Topsham Water District (District) violated Chapter 81 §§ 6(B)(4) and 10(C). We further find no violation of Chapter 81 § 9(B). We direct the CAD Director to issue a CAD Bulletin to all utilities stating how utilities should apply these provisions of Chapter 81.

II. DISCUSSION AND DECISION

On May 1, 2002, the Director of CAD notified the District that it had violated Chapter 81 §§ (9)(B), 6(B)(4), and 10(C)(B)(1) in its handling of a complaint involving disconnection of a customer. On May 8, 2001, the District filed a letter stating it was appealing CAD's determination. On July 24, 2002, the District filed a letter explaining its position as to the violations cited by CAD. We address each violation below.

A. Chapter 81 §§ 9(B), 6(B)(4)

1. Background

Chapter 81 § 9(B) requires a utility to "provide written notice of the intent to disconnect at least fourteen (14) calendar days before the stated disconnection date" in certain specified situations, including failure to pay. In this case, the District sent a disconnection notice on July 25, 2001 with a disconnection date of August 8, 2001. According to the Director of CAD, the earliest date for disconnection on a July 25 notice is August 9. CAD has interpreted Chapter 81 to require 14 days before the disconnection date. Therefore, counting July 26 as the first day, fourteen days of notice before the disconnection date would include August 8, allowing disconnection on August 9. CAD cited the District for the same violation for a notice it sent on August 23 with a disconnection date of September 5, 2001.

The District disputes this interpretation. It claims it has always noticed disconnection for the 14th day after the notice: in this case August 8. The District notes that Chapter 81 contains no clear definition of how the dates are to be calculated. For the August 23 notice, it claims it only had to provide three business days notice if the disconnection is due to a broken payment arrangement (Chapter 81 (A)(2), so September 5 was well over three business days.

2. Decision

With regard to the July 25 notice, we agree that either interpretation is plausible under the language in Chapter 81. We understand that CAD has consistently taken the position over the years that 14 days notice is required before the disconnection date. We agree that the rule should be clarified. In the meantime, we direct the Director of CAD to issue a CAD Bulletin informing all utilities that a notice must be issued at least 14 days before the stated disconnection date and that in calculating the 14 days, the date of the notice is sent and the date of disconnection should not be included. Given the rule's lack of clarity, we will not find that the District violated the rule in this instance.

With regard to the August 23 notice, it related to an oral arrangement made by the customer. Chapter 81 § 6(B)(4) states that "If a payment arrangement was not confirmed in writing within three business days after the oral agreement was made, a utility cannot disconnect the customer for failure to comply with the payment arrangement. A utility must attempt personal contact to negotiate a new payment arrangement or issue a 14-day disconnection notice....". Therefore the District violated the rule when it noticed disconnection for September 5, 2002.

B. Chapter 81 §§ 6(B)(4) and 10(C)

1. Background

Chapter 81 § 6(B)(1) allows a payment arrangement to be made orally but requires a utility to confirm in writing every payment arrangement that requires more than one payment or any payment after the effective period of a pending disconnection notice. As described above, Chapter 81 § 6(B)(4) limits disconnection if the arrangement is not in writing.

In this case, on August 10, the customer made an oral agreement to make a payment the following weekend. The District did not confirm the agreement in writing and subsequently visited her premises to disconnect her service on August 21 for failure to keep the arrangement. After stating she would make the payment that afternoon, the District did not disconnect her service but did charge her a \$10 service charge for visiting her home.

The Director of CAD found the District violated Chapter 81 § 6(B)(4) by visiting the premise to disconnect on August 21 and that the \$10 fee and any late fees imposed pursuant to Chapter 81 § 10(C) were also improper.

The District claims the arrangement was not required to be in writing because it only required one payment and payment was due in the effective period of a pending July 25 disconnection notice. The subsequent attempt at disconnection when she failed to pay under the oral agreement was within 10 business days of the date in the notice. Under Chapter 81 § 9(F), a disconnection notice is effective for 10 business days after the disconnection date in the notice.

2. Decision

Chapter 81 § 6 (B)(4) applies to those payment arrangements that a utility did not have to confirm in writing pursuant to Section 6 (B)(1). If the utility takes advantage of not confirming in writing these types of arrangements, Section 6(B)(4) still controls the utility's action if the customer fails to comply with the oral arrangement. As explained in the Commission's order adopting Chapter 81 (Docket No. 88-50 (July 29, 1988)): "An agreement to accept payment after the due date of a pending 14-day disconnection is a payment arrangement. It has the effect of canceling the pending disconnection notice." This information was provided in a CAD Bulletin issued in October 1988 (See CAD Bulletin 88-3 attached to this Order). Therefore, the original disconnection notice (with a date of August 8) was no longer valid when the District accepted the new oral arrangement on August 10. The District therefore violated Section 6(B)(4) when it visited her residence to disconnect on August 21. The District should comply with the requirements in Bulletin 88-3. We also direct the CAD Director to reissue the Bulletin so that all utilities are reminded of this interpretation. Because the disconnection visit was not permitted due to the District's acceptance of the new verbal arrangement of August 10, 2001, the \$10 fee for visiting the premises on August 21 also violated Chapter 81 § 10 (C) as found by the CAD Director.

Although we agree with the CAD's application of Chapter 81 in the circumstances described above, we note that the District appears to have acted in good faith in its treatment of this customer. We urge the District to send a representative to one of the periodic trainings conducted by CAD and sponsored by the Maine Rural Water Association each year for a refresher on the application of Chapter 81's requirements.

Dated at Augusta, Maine, this 25th day of September, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.